Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 31 January 2017

Case Number: T 1753/12 - 3.3.10

Application Number: 01109350.7

Publication Number: 1250940

IPC: A61L15/20, A61L15/46

Language of the proceedings: EN

Title of invention:
An absorbent article comprising an agent able to convey a perception to the wearer

Patent Proprietor:
THE PROCTER & GAMBLE COMPANY

Opponent:
Kimberly-Clark Worldwide, Inc.

Headword:
Absorbent article / THE PROCTER & GAMBLE COMPANY

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of the decision: revocation of the patent at request of the proprietor

Decisions cited:
T 0073/84, T 1536/14

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1753/12 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 31 January 2017

Appellant: (Opponent)	Kimberly-Clark Worldwide, Inc. 401 North Lake Street Neenah, Wisconsin 54956 (US)
Representative:	Beacham, Annabel Rose Dehns St Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Respondent: (Patent Proprietor)	THE PROCTER & GAMBLE COMPANY One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	Kremer, Véronique Marie Joséphine Procter & Gamble Service GmbH IP Department Frankfurter Strasse 145 61476 Kronberg im Taunus (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 8 June 2012 concerning maintenance of the European Patent No. 1250940 in amended form.**

Composition of the Board:

Chairman	P. Gryczka
Members:	C. Komenda
	C. Schmidt

Summary of Facts and Submissions

I. The appeal of the Appellant (Opponent) lies from the decision of the Opposition Division, which found that the European Patent No. 1 250 940 in its amended form according to the then pending main request fulfilled the requirements of the EPC.

II. The Board issued a summons to oral proceedings before the Board scheduled for 7 March 2017.

III. With a letter dated 24 January 2017 the Respondent (Patent Proprietor) informed the Board that he no longer approved the text on the basis of which the European Patent No. 1 250 940 was granted and that he withdrew all his requests. Further, he informed the Board that he would not attend the oral proceedings scheduled for 7 March 2017.

IV. Consequently, the date for the oral proceedings was cancelled and the Board issued a decision in writing.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon the European Patent only in the text submitted to it, or agreed by the proprietor of the patent.

2. Such an agreement cannot be deemed to exist if the proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted an withdraws all requests (see section III, above).

3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. It is established case law of the Boards that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see decision T 73/84, OJ EPO, 1985, 241; T 1536/14, not published in the OJ EPO; Case Law of the Boards of Appeal, 8th edition 2016, IV.C.5.2).

4. The Board has no reason in the present case to deviate from the consistent approach of the Boards of Appeal.

Order

For these reasons it is decided that:

5. The decision under appeal is set aside.

6. The patent is revoked.

The Registrar: The Chairman:

C. Rodríguez Rodríguez P. Gryczka

Decision electronically authenticated